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Attorneys for Defendant
 HILTON WORLDWIDE, INC. DBA
 DOUBLETREE HOTEL - SAN FRANCISCO
 AIRPORT

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO

GWENDOLYN GAVIN, an individual,
 Plaintiff,

v.

HILTON WORLDWIDE, INC. DBA
 DOUBLETREE SAN FRANCISCO AIRPORT
 BY HILTON, AND DOES 1 THROUGH 15,
 INCLUSIVE,
 Defendants.

(San Mateo Superior Court Case
 No. CIV 510537)

**NOTICE OF REMOVAL OF ACTION
 TO FEDERAL COURT**

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE
 NORTHERN DISTRICT OF CALIFORNIA, PLAINTIFF GWENDOLYN GAVIN AND TO
 HER ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendant HILTON WORLDWIDE, INC. hereby invokes
 this Court's jurisdiction under 28 U.S.C. §§ 1331, 1332, 1441(a) and (b), and 1442 and removes
 the above-entitled action to this Court from the Superior Court of the State of California in and
 for the County of San Mateo. The grounds for removal are two-fold, based on diversity of
 citizenship jurisdiction and on federal question jurisdiction, as follows:

1. On December 19, 2011 an action was commenced in the Superior Court of the
 State of California in and for the County of San Mateo, entitled Gwendolyn Gavin v. Hilton

FILED
 JAN 19 2012
 RICHARD W. WIEKING
 CLERK U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 JSC

1 Worldwide, Inc. dba Doubletree San Francisco Airport By Hilton, and Does 1 Through 15,
 2 Inclusive, San Mateo Superior Court Case No. CIV 510537 (the "Action"). A true and correct
 3 copy of the Summons and Complaint ("Complaint") are attached hereto as Exhibit A.

4 2. This is a lawsuit filed by Plaintiff Gwendolyn Gavin ("Plaintiff") against her
 5 former employer, Hilton Worldwide, Inc. dba Doubletree Hotel – San Francisco Airport
 6 ("Defendant"), in which Plaintiff alleges: (1) First Cause of Action: Disability Discrimination
 7 under the California Fair Employment and Housing Act ("FEHA"), Government Code § 12920
 8 et seq. and under the federal Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 et
 9 seq.; (2) Second Cause of Action: Failure to Prevent Discrimination under the FEHA,
 10 Government Code § 12940(k); (3) Third Cause of Action: Retaliation under the FEHA and under
 11 the ADA; (4) Fourth Cause of Action: Wrongful Termination in Violation of Public Policy; (5)
 12 Fifth Cause of Action: Violation of Statutory Rights Regarding Medical Information under
 13 California Civil Code § 56 et seq., Government Code § 12940 (e)-(f), and 42 U.S.C. § 12112(d);
 14 (6) Sixth Cause of Action: Violation of Constitutional and Common Law Privacy Rights; (7)
 15 Seventh Cause of Action: Violation of Family Medical Leave Act ("FMLA"), 29 U.S.C. § 2601,
 16 and California Family Rights Act ("CFRA"), Government Code 12945.2; (8) Eighth Cause of
 17 Action: Intentional Infliction of Emotional Distress; and (9) Ninth Cause of Action: Negligence.

18 3. On December 21, 2011, Plaintiff mail-served the Summons, Complaint and a
 19 Notice of Acknowledgment and Receipt on Defendant's counsel, which was received on
 20 December 22, 2011. A true and correct copy of the Notice of Acknowledgment of Receipt is
 21 attached as Exhibit B hereto. Defendant's counsel's receipt of the Summons, Complaint and
 22 Notice of Acknowledgment and Receipt was the first notice Defendant received of the Action.

23 4. On December 30, 2011, Defendant's counsel accepted and acknowledged service
 24 of the Complaint and Summons on Defendant's behalf. See Exhibit B.

25 5. On January 17, 2012, Defendant filed an Answer to Plaintiff's Complaint, a true
 26 and correct copy of which is attached as Exhibit C hereto.

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6. This Notice of Removal is timely because this Notice of Removal is filed within thirty (30) days after Defendant received papers from which it could first be ascertained that the case was removable. *See* 28 U.S.C. §1446(b).

FEDERAL QUESTION JURISDICTION

7. The Complaint is within the original jurisdiction of this Court based upon federal question jurisdiction pursuant to 28 U.S.C. §1331. Section 1331 states, in pertinent part:

The district courts shall have original jurisdiction of all civil actions under the Constitution, laws, or treatises of the United States.

8. Sections 1441(a) and (b) of Title 28 of the United States Code provide the basis for removal jurisdiction of this action based upon federal question. Section 1441(b) states, in pertinent part:

Any civil action of which the district courts have original jurisdiction founded on a claim or rights arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties.

9. In particular, Plaintiff's First Cause of Action is brought the federal Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 et seq., in addition to state law. (Complaint, ¶¶ 23, 25 and 31). Plaintiff's Third Cause of Action is also brought under the under the ADA, 42 U.S.C. 12101 et seq. (Complaint, ¶ 41). Her Fifth Cause of Action is brought under 42 U.S.C. § 12112(d) of the ADA. (Complaint, ¶¶ 48, 49). Plaintiff's Seventh Cause of Action is premised on a violation of the federal Family Medical Leave Act ("FMLA"), 29 U.S.C. § 2601. (Complaint, ¶¶ 61, 62, 63 and 64).

DIVERSITY OF CITIZENSHIP JURISDICTION

10. This is a civil action of which this Court has original jurisdiction under 28 U.S.C. §1332(a) (diversity of citizenship) and is one that may be removed to this Court by Defendant pursuant to 28 U.S.C. §1441(a) and (b) because it is a civil action between citizens of different states and the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interests and costs.

///

1 11. Defendant is informed and believes Plaintiff was at the time she filed this action
2 and still is a citizen and resident of the State of California, as alleged in paragraph 1 of the
3 Complaint.

4 12. Defendant presently is a citizen of the State of Delaware and the State of Virginia,
5 and was so at the time Plaintiff filed her Complaint. A corporate defendant "shall be deemed to
6 be a citizen of any State by which it has been incorporated and of the State where it has its
7 principal place of business ..." 28 U.S.C. § 1331(c)(1). Both at the time Plaintiff filed her
8 Complaint in San Mateo County Superior Court and at the time Defendant moves this Court for
9 removal of the action, Defendant was incorporated under the laws of the State of Delaware.
10 Defendant's principal place of business currently is, and was at the time Plaintiff filed her
11 Complaint, the Commonwealth of Virginia. Although Defendant does business throughout the
12 continental United States, it controls its nationwide operations from McLean, Virginia, where its
13 headquarters and executive and administrative offices are located.

14 13. The presence of "Doe" defendants in the Complaint has no bearing on diversity
15 with respect to removal. 28 U.S.C. § 1441(a).

16 14. Without conceding that Plaintiff is entitled to damages or could recover damages
17 in any amount whatsoever, the amount in controversy in this action exceeds \$75,000. 28 U.S.C.
18 §1332(a). Where a plaintiff's state court complaint is silent as to the amount of damages
19 claimed, the removing defendant need only establish that it is more probable than not that
20 plaintiff's claim exceeds the jurisdictional minimum. *Sanchez v. Monumental Life Ins. Co.*, 95
21 F.3d 856, 860-861 (9th Cir. 1996). The amount in controversy exceeds the sum of \$75,000,
22 exclusive of interest and costs, for the following reasons:

23 a. The Complaint alleges Plaintiff was employed by Defendant for 5 years.
24 (Complaint, ¶ 6). Plaintiff alleges she worked around 30 hours a week on a modified work
25 schedule, for which she earned around \$57,000 until January 2011 when her pay was reduced to
26 around \$43,000. (Complaint, ¶¶ 8, 15). Plaintiff alleges she was wrongfully terminated on or
27 about July of 2011 and has suffered damages caused therefrom. (Complaint, ¶15 and prayer for
28 relief.)

1 b. Plaintiff, on her nine causes of action, seeks damages for loss of earnings,
2 employment benefits, attorney's fees and legal expenses, damages for emotional distress,
3 humiliation, and mental anguish, exemplary and punitive damages, and "such other and further
4 relief as the Court deems just and proper." (Complaint, ¶¶ 31, 34, 35, 39, 40, 41, 45, 46, 50, 51,
5 58, 59, 65, 66, 69, 70, 74, 75 and 76, and Prayer for Relief).

6 c. In determining whether the amount in controversy exceeds \$75,000, the
7 Court must presume the plaintiff will prevail on each and every one of her claims. *Kenneth*
8 *Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F.Supp.2d 993, 1001 (C.D. Cal. 2002),
9 *citing, Burns v. Windsor Ins. Co.*, 31 F.3d 1092, 1096 (11th Cir. 1994) (the amount in
10 controversy analysis presumes that "plaintiff prevails on liability") and *Angus v. Shiley Inc.*, 989
11 F.2d 142, 146 (3d Cir. 1993) ("the amount in controversy is not measured by the low end of an
12 open-ended claim, but rather by reasonable reading of the value of the rights being litigated").
13 The argument and facts set forth herein may appropriately be considered in determining whether
14 the jurisdictional amount in controversy is satisfied. *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 843,
15 n.1, (9th Cir. 2002).

16 d. The amount in controversy may include general and special compensatory
17 damages and attorney's fees which are recoverable by statute. *Galt G/S v. JSS Scandinavia*, 142
18 F.3d 1150, 1155-1156 (9th Cir. 1998). The Court may examine the nature of the action and the
19 relief sought and take judicial notice of attorneys' fee awards in similar cases. *See, e.g.*,
20 *Simmons v. PCR Technology*, 209 F.Supp.2d 1029, 1035 (N.D. Cal. 2002) (attorneys' fees in
21 individual employment discrimination cases often exceed damages).

22 e. Cases in the Ninth Circuit firmly establish that statutory attorneys' fees
23 will be included as a basis for determining the jurisdictional amount in controversy. *See Galt*
24 *G/S, supra*, 142 F.3d at 1155-56. Furthermore, such fees are calculable beyond the time of
25 removal. *Simmons, supra*, 209 F.Supp.2d at 1035.

26 f. Punitive damages are also included in calculating the amount in
27 controversy. *Davenport v. Mutual Ben. Health & Acc. Ass'n*, 325 F.2d 785, 787 (9th Cir. 1963).
28 *See also, Aucina v. Amoco Oil Co.*, 871 F.Supp. 332 (S.D. Iowa 1994). In *Aucina*, the

defendant-employer established the amount in controversy exceeded the jurisdictional minimum where the former employee asserted claims for lost wages, lost benefits, mental anguish, and punitive damages. The court noted: “[b]ecause the purpose of punitive damages is to capture a defendant’s attention and deter others from similar conduct”, the plaintiff’s claim for punitive damages “might alone” exceed the jurisdictional minimum. *Id.* at 334. Thus, although Defendant vigorously denies Plaintiff’s allegations and claims, if Plaintiff was to prevail on her discrimination, retaliation, wrongful termination, and other causes of action and establish the requisite state of mind, the potential punitive damages award alone against a defendant such as Hilton Worldwide, Inc. could well exceed the \$75,000 jurisdictional minimum.

g. Accordingly, for these reasons, Plaintiff’s allegations satisfy the jurisdictional prerequisite for amount in controversy. It cannot be said to a legal certainty that Plaintiff would not be entitled to recover the jurisdictional amount. *Anthony v. Security Pacific Financial Services, Inc.*, 75 F.3d 311, 315 (7th Cir. 1996); *Watson v. Blankinship*, 20 F.3d 383, 386-387 (10th Cir. 1994).

h. Therefore, the alleged claims, damages and fees requested in Plaintiff’s Complaint demonstrate the amount in controversy in this case exceeds the requirement under 28 U.S.C. §1332(a) (diversity of citizenship jurisdiction).

VENUE

15. Venue lies in the United States District Court for the Northern District of California, pursuant to 28 U.S.C. §§ 1391(a) and 1441(a) because this is the judicial district in which the action arose.

16. Accordingly, assignment to the San Francisco Division of the Northern District is proper pursuant to Local Rule 3.2, which provides:

San Francisco and Oakland. Except as provided in Civil L.R. 3-2(c), all civil actions which arise in the counties of Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, San Francisco, San Mateo or Sonoma shall be assigned to the San Francisco Division or the Oakland Division.

17. At all times relevant to the Complaint, Plaintiff worked for Defendant at its hotel located in Burlingame, County of San Mateo, California.

1 WHEREFORE, Defendant HILTON WORLDWIDE, INC. prays that the above action
2 now pending against it in the Superior Court of the State of California in and for the County of
3 San Mateo be removed therefrom to this Court.

4
5 Dated: January 19, 2012

RESPECTFULLY SUBMITTED,

6 JACKSON LEWIS LLP

7
8 By: 

9 Jamerson C. Allen

10 Cara Ching-Senaha

Attorneys for Defendant

11 HILTON WORLDWIDE, INC. DBA

12 DOUBLETREE HOTEL - SAN FRANCISCO
13 AIRPORT
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4817-2798-1582, v. 1

EXHIBIT A

SUM-100

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

Hilton Worldwide, Inc. dba Doubletree San Francisco Airport by Hilton,
and DOES 1 through 15, inclusive

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

Gwendolyn Gavin

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ENDORSED FILED
SAN MATEO COUNTY

DEC 19 2011

Clerk of the Superior Court
By T. Judd
DEPUTY CLERK

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **(AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.)**

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): San Mateo Superior Court
400 County Center, Redwood City, California 94063

CASE NUMBER:
(Número del Caso):

01V 510537

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Kevin Woodall, 580 California Street, 16th Floor, San Francisco, CA 94104; (415) 413-4629

DATE:
(Fecha)

DEC 19 2011

JOHN C. FITTON

Clerk, by
(Secretario)

T. JUDD

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

Page 1 of 1

WOODALL LAW OFFICES
580 CALIFORNIA STREET, 16TH FLOOR
SAN FRANCISCO, CALIFORNIA 94104
TELEPHONE: (415) 439-4803
FACSIMILE: (866) 937-4109
KEVIN@KWOODALLLAW.COM

KEVIN F. WOODALL, BAR NO. 180650
ATTORNEYS FOR PLAINTIFF, GWENDOLYN GAVIN

ENDORSED FILED
SAN MATEO COUNTY

DEC 19 2011

Clerk of the Superior Court
By T. Judd
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO

GWENDOLYN GAVIN, AN INDIVIDUAL,)
)
) PLAINTIFF,)
)
) V.)
)
) HILTON WORLDWIDE, INC. DBA)
) DOUBLETREE SAN FRANCISCO)
) AIRPORT BY HILTON, AND DOES 1)
) THROUGH 15, INCLUSIVE,)
)
) DEFENDANTS.)

CASE No. **CIV 510537**

COMPLAINT FOR:

1. **DISABILITY DISCRIMINATION**
2. **FAILURE TO PREVENT DISCRIMINATION**
3. **RETALIATION**
4. **WRONGFUL TERMINATION**
5. **VIOLATION OF STATUTORY RIGHT TO PRIVACY**
6. **VIOLATION OF CONSTITUTIONAL AND COMMON LAW RIGHTS TO PRIVACY**
7. **VIOLATION OF FAMILY MEDICAL LEAVE ACT AND CALIFORNIA FAMILY RIGHTS ACT**
8. **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
9. **NEGLIGENCE**

JURY TRIAL DEMANDED

Plaintiff, Gwendolyn Gaven, alleges as follows:

GENERAL ALLEGATIONS

1. Plaintiff, Gwendolyn Gavin, is an individual who resides in Suisun City, California. At all times mentioned herein, Plaintiff was employed as Director of Housekeeping by Defendant, Hilton Worldwide, Inc. dba Doubletree San Francisco

1 Airport by Hilton, at its hotel located in Burlingame, California.

2 2. Defendant Hilton Worldwide, Inc. dba Doubletree San Francisco Airport
3 by Hilton is authorized to conduct business and conducts business in California, and
4 operates hotels throughout California, including its hotel located in Burlingame,
5 California.

6 3. Plaintiff is ignorant of the true names and capacities of the Doe Defendants
7 sued herein as DOES 1 through 15, inclusive; therefore Plaintiff sues said Doe
8 Defendants by fictitious names. When and if the identity of any Doe Defendant is
9 ascertained, Plaintiff will promptly seek leave to amend the complaint to allege the true
10 name(s) and capacity(ies) of those Doe Defendants. Plaintiff is informed and believes
11 that each of these fictitiously named Doe Defendants is responsible in some manner for
12 the acts alleged herein and that Plaintiff's damages and injuries as described herein were
13 proximately caused by such Doe Defendants.

14 4. Plaintiff is informed and believes and thereon alleges that each Doe
15 Defendant and Hilton Worldwide, Inc. dba Doubletree San Francisco Airport by Hilton
16 (collectively "Hilton" or "Defendants"), directly or indirectly, or through agents or other
17 persons, jointly employed Plaintiff, and exercised control over her working conditions.
18 Plaintiff is informed and believes and thereon alleges that, at all relevant times, each
19 Defendant was the principal, agent, partner, joint venturer, officer, director, controlling
20 shareholder, subsidiary, affiliate, parent corporation, successor in interest, and/or
21 predecessor in interest of some or all of the other Defendants, and was engaged with
22 some or all of the other Defendants in a joint enterprise for profit, and bore such other
23 relationships to some or all of the other Defendants so as to be liable for their conduct
24 with respect to the matters alleged below. Plaintiff is informed and believes and thereon
25 alleges that each Defendant acted pursuant to and within the scope of the relationships
26 alleged above, that each Defendant knew or should have known about, and authorized,
27 ratified, adopted, approved, controlled, and aided and abetted the conduct of all other
28 Defendants.

1 5. Venue is proper in San Mateo County under Code of Civil Procedure § 395
2 et seq., as Hilton's liability arose and injury was sustained by Plaintiff in Burlingame,
3 California.

4 6. Plaintiff's employment began with Hilton in 2006. In or before 2007,
5 Plaintiff was diagnosed with chronic, severe depression, a "serious health condition" as
6 defined by the Family Medical Leave Act ("FMLA"), 29 U.S.C. § 2601 et seq., and the
7 California Family Rights Act ("CFRA"), Government Code § 12945.2 et seq., and a
8 "disability" that limited and substantially limited one or more major life activities as
9 defined by the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101 et seq. and
10 the Fair Employment and Housing Act ("FEHA"), Government Code § 12900 et seq.
11 Hilton was a "covered entity" or "employer" as defined by the FMLA, CFRA, ADA and
12 FEHA, and was required to comply with each of those statutes.

13 7. In 2007, Plaintiff requested and received a leave of absence due to her
14 medical condition by providing a FMLA/CFRA certification form completed by her
15 physician. After returning from her leave of absence in 2007, Plaintiff notified Hilton
16 that she was receiving treatment for her medical condition during the afternoons from
17 Monday through Friday each week, and requested reasonable accommodations and
18 intermittent leaves of absence to attend treatment. Plaintiff submitted multiple physician
19 notes and FMLA/CFRA certification forms, in which her physician confirmed that
20 Plaintiff suffered from a chronic and ongoing condition, and required treatment during
21 the afternoons from Monday through Friday each week.

22 8. After multiple discussions with her supervisor, Jim Ensign, Plaintiff was
23 provided with reasonable accommodations and intermittent leave starting in or about
24 2007 or early 2008. Hilton not only knew that Plaintiff had a disability as defined by the
25 ADA and FEHA, but Plaintiff was regarded by Hilton as having a disability from 2007
26 until her employment was terminated in July, 2011. Plaintiff's schedule was modified to
27 allow her to attend treatment during the afternoons from Monday through Friday each
28 week. Specifically, Plaintiff was scheduled to work on the weekends, take off from work

1 on two weekdays, and work the mornings of the remaining three weekdays. While on
2 this modified schedule, Plaintiff worked approximately 30 hours each week, earned an
3 annual salary of \$57,000, and received positive performance reviews from her supervisor.
4 Plaintiff was able to perform her essential duties with reasonable accommodations while
5 employed by Hilton.

6 9. Although Plaintiff continued to provide physician notes and FMLA/CFRA
7 certification forms to Hilton from 2007 until late June, 2010, in which her physician
8 noted the same reasonable accommodations and intermittent leave were necessary for her
9 medical condition, the new Interim General Manager, Ahmed Mahrous, notified Plaintiff
10 that she would no longer receive them (i.e., the modified schedule) to attend her
11 treatment based upon his conversation with Xina Kurihara, Director of Human
12 Resources. Plaintiff contested this decision to Mr. Mahrous and Ms. Kurihara by
13 reminding them she recently submitted physician notes and FMLA/CFRA certification
14 forms noting her chronic condition, the continued need to attend treatment, and the need
15 to maintain the modified schedule. Despite this fact, Mr. Mahrous and Ms. Kurihara
16 refused to provide the reasonable accommodations and intermittent leave that Plaintiff
17 received since 2007, in violation of the ADA, FEHA, FMLA and CFRA.

18 10. During her conversation with Ms. Kurihara in late June, 2010, Plaintiff
19 discovered that despite her refusal to seek FMLA/CFRA leave and obtain a certification
20 from her physician (or provide an authorization for her employer to obtain her medical
21 information) in late September, 2009, Clifford Fernando, Hilton's Assistant Human
22 Resources Manager, sought and obtained her private medical information without her
23 knowledge or consent from her physician in October, 2009. Then, Hilton used and
24 disclosed this private medical information. This private medical information was
25 consistent with all other physician notes and FMLA/CFRA certification forms obtained
26 by Plaintiff, confirming that Plaintiff had a lifelong, recurring serious health condition,
27 and that she continued to need treatment, intermittent leave, and a modified schedule.

28 11. As a result of Hilton's failure to provide reasonable accommodations and

1 intermittent leave, Plaintiff was unable to continue her treatment schedule, which resulted
2 in a prompt deterioration of Plaintiff's health. In fact, approximately 10 days after
3 Plaintiff was denied her reasonable accommodation and intermittent leave, Plaintiff
4 attempted suicide, was hospitalized on multiple occasions, and required intensive out-
5 patient treatment, such that Plaintiff was unable to work and remained on a protected
6 leave of absence from early July, 2010 until October, 2010. Plaintiff was not
7 compensated by Hilton during her leave of absence.

8 12. During her leave of absence, Plaintiff filed an administrative complaint
9 against Hilton with the Equal Employment Opportunity Commission ("EEOC"), in which
10 she asserted disability discrimination, failure to provide reasonable accommodations, and
11 violation of her privacy by obtaining private medical information without her knowledge
12 or consent. In addition, Plaintiff requested that Hilton conduct an investigation into her
13 allegations that the Human Resources Department obtained her private medical
14 information without her knowledge or consent. Contrary to the facts, in Hilton's internal
15 investigation, it incorrectly determined that Plaintiff authorized the release of her private
16 medical information and/or that Hilton's Human Resources Department never contacted
17 Plaintiff's physician in September or October, 2010.

18 13. When Plaintiff returned from her leave of absence in October, 2010, her
19 physician required that Plaintiff work a reduced schedule, approximately 12 hours per
20 week, to attend intensive treatment. Although Hilton permitted the reduced schedule for
21 a couple of months, it took away job duties that Plaintiff was able to perform and reduced
22 Plaintiff's compensation to 30 percent of what she made prior to Hilton's denial of her
23 continued reasonable accommodations and intermittent leave in late June, 2010. The
24 reduced compensation and reduced schedule continued until December, 2010, when
25 Plaintiff returned to the modified schedule that she had from 2007 until late June, 2010.

26 14. In late 2010, Plaintiff filed another EEOC complaint alleging that Hilton
27 retaliated against her by taking away her duties that she was able to perform, such as
28 scheduling and ordering supplies, and not providing her with subordinates' performance

1 evaluations to review.

2 15. Even though Plaintiff worked the same modified schedule and number of
3 hours per week (i.e., approximately 30 hours per week) that she did prior to June, 2010,
4 her salary was reduced from \$57,000 to \$43,000 per year in January, 2011, which
5 continued until her employment was terminated in July, 2011. On information and belief,
6 Hilton reduced Plaintiff's compensation because she had a disability and was regarded as
7 having a disability, filed complaints with the EEOC and made complaints of
8 unauthorized access to her private medical information, refused to provide authorization
9 to obtain medical information, and took protected leaves of absence under the ADA,
10 FEHA, CFRA and FMLA.

11 16. From late 2010 until July, 2011, Hilton disciplined Plaintiff because, on
12 information and belief: (a) she had a disability as defined by the ADA and FEHA and
13 was regarded as having a disability by Hilton, (b) she made complaints of disability
14 discrimination to the EEOC and complaints of unauthorized access to her private medical
15 information, (c) she refused to provide authorization to obtain her medical information,
16 and (d) she took protected leaves of absence under the CFRA and FMLA.

17 17. In March, 2011, Plaintiff requested to leave work and visit her physician
18 due to anxiety, as she felt an imminent panic attack. Plaintiff's supervisors, Edgar Cal
19 and Mike McKee, would not allow Plaintiff to leave for treatment. This resulted in
20 Plaintiff having a panic attack and having to be taken to the emergency room at a local
21 hospital by co-worker. After this incident, Plaintiff was prescribed new medication to
22 address the issues created by Hilton's failure to accommodate Plaintiff and provide her
23 with a protected leave of absence.

24 18. In April, 2011, Plaintiff and Hilton participated in mediation with the
25 EEOC, but her claims were not settled.

26 19. Shortly thereafter, in July, 2011, Plaintiff's employment was terminated by
27 Hilton. On information and belief, Hilton terminated Plaintiff's employment because she
28 had a disability and was regarded as having a disability, filed complaints with the EEOC

1 and made complaints of unauthorized access to her private medical information, refused
2 to provide authorization to obtain her medical information, and took protected leaves of
3 absence under the ADA, FEHA, CFRA and FMLA.

4 20. Hilton failed to take all reasonable steps necessary to prevent the
5 harassment and discrimination.

6 21. Plaintiff exhausted her administrative remedies by filing timely complaints
7 against Defendants with the Department of Fair Employment and Housing ("DFEH") and
8 the EEOC, receiving right-to-sue notices from those agencies and serving Defendants
9 with the administrative complaints and right-to-sue notices, and filing this Complaint in a
10 timely manner after receiving the right-to-sue notices.

11 **FIRST CAUSE OF ACTION**

12 **Disability Discrimination (Gov't Code § 12920 et seq. and 42 U.S.C. § 12101 et seq.)**

13 **Against All Defendants**

14 22. Plaintiff incorporates all paragraphs above as though fully set forth herein.

15 23. At all relevant times, Hilton was the employer and Plaintiff was an
16 employee of Hilton under the Fair Employment and Housing Act, Government Code
17 § 12920 et seq., and the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq.

18 24. From 2007 until her employment was terminated in July, 2011, Plaintiff
19 had a disability, chronic and severe depression that limited one or more major life
20 activities including, but not limited to, mental and emotional processes, interacting and
21 communicating with others, and thinking and concentrating. Hilton also regarded
22 Plaintiff as having a disability that limited one or more major life activities.

23 25. Plaintiff was qualified for her position and able to perform the essential
24 functions of her position with a reasonable accommodation. As Plaintiff's physician
25 indicated to Hilton, Plaintiff could perform the essential functions of her position with
26 reasonable accommodations, including a modified schedule to permit her to attend
27 treatment. Although Plaintiff requested such reasonable accommodations, which were
28 provided to Plaintiff from 2007 until June, 2010, Hilton refused to engage in a timely,

1 good faith interactive process and discontinued the reasonable accommodations in late
2 June, 2010. Had Hilton continued to provide the reasonable accommodations, Plaintiff
3 would have been able to perform the essential functions of the position and/or enjoy the
4 benefits and privileges of nondisabled employees, as required by the FEHA and ADA.

5 26. As a result of Hilton's failure to provide reasonable accommodations,
6 Plaintiff was unable to continue her treatment schedule, which resulted in the prompt
7 deterioration of her health. In fact, approximately 10 days after Plaintiff was denied her
8 reasonable accommodations, Plaintiff attempted suicide, was hospitalized on multiple
9 occasions, and required intensive out-patient treatment, such that Plaintiff was unable to
10 work and remained on a protected leave of absence from early July, 2010 until October,
11 2010. Plaintiff was not compensated by Hilton during her leave of absence.

12 27. On information and belief, after returning from her unpaid leave of absence,
13 Hilton discriminated against Plaintiff because of her disability by taking away duties that
14 Plaintiff was able to perform, disciplining her without justification, and reducing her
15 salary from approximately \$57,000 to \$43,000 per year, even though Plaintiff was
16 working the same modified schedule and number of hours she worked from 2007 until
17 June, 2010.

18 28. On information and belief, in July, 2011, Hilton terminated Plaintiff's
19 employment because Plaintiff had a disability and Hilton regarded Plaintiff as having a
20 disability.

21 29. As a direct and proximate result of Hilton's willful, knowing and
22 intentional failure to engage in a timely, good faith interactive process, failure to provide
23 a reasonable accommodation to Plaintiff, and disability discrimination, Plaintiff has
24 suffered and will continue to suffer pain and suffering, severe mental anguish and
25 emotional and physical distress and injury, expenses, humiliation, anxiety, loss of
26 earnings, past and future, and other employment benefits and job opportunities in an
27 amount to be determined at trial, all in excess of the Court's jurisdiction.

28 30. In doing the acts alleged herein, Hilton acted fraudulently, willfully,

intentionally, maliciously and with oppression, and in conscious disregard of the rights and safety of Plaintiff, thereby entitling Plaintiff to an award of exemplary and punitive damages in an amount to be proven at trial.

31. Plaintiff has also incurred and continues to incur legal expenses and attorneys' fees. Plaintiff is presently unaware of the precise amount of these expenses and fees. Plaintiff requests attorneys' fees pursuant to the FEHA and ADA.

SECOND CAUSE OF ACTION
Failure to Prevent Discrimination (Gov't Code § 12940(k) et seq.)

Against All Defendants

32. Plaintiff incorporates all paragraphs above as though fully set forth herein.

33. At all relevant times, Hilton was required to, but failed to take all reasonable steps necessary to prevent discrimination under Government Code § 12940(k) et seq.

34. As a direct and proximate result of Hilton's failure to take all reasonable steps necessary to prevent discrimination, Plaintiff has suffered and will continue to suffer pain and suffering, severe mental anguish and emotional and physical distress and injury, expenses, humiliation, anxiety, loss of earnings, past and future, and other employment benefits and job opportunities in an amount to be determined at trial, all in excess of the Court's jurisdiction.

35. Plaintiff has also incurred and continues to incur legal expenses and attorneys' fees. Plaintiff is presently unaware of the precise amount of these expenses and fees. Plaintiff requests attorneys' fees pursuant to Government Code § 12965.

THIRD CAUSE OF ACTION
Retaliation (Gov't Code § 12920 et seq. and 42 U.S.C. § 12101 et seq.)

Against All Defendants

36. Plaintiff incorporates all of the foregoing paragraphs as though fully set forth herein.

37. Plaintiff made complaints to Hilton of disability discrimination, failure to

1 provide reasonable accommodations and obtaining her private medical information
2 without her knowledge or consent from June, 2010 until her employment was terminated
3 in July, 2011. In or about September and December, 2010, Plaintiff filed complaints with
4 the EEOC against Hilton alleging disability discrimination, obtaining her private medical
5 information without her knowledge and consent, and retaliation.

6 38. On information and belief, because Plaintiff made such complaints of
7 discrimination, retaliation, obtaining her private medical information without her
8 knowledge or consent, and other illegal conduct, she was subjected to unwarranted
9 discipline, her duties were taken away from her, her salary was reduced, and her
10 employment was terminated, among other things.

11 39. As a direct and proximate result of Hilton's willful, knowing and
12 intentional retaliation of her, Plaintiff has suffered and will continue to suffer pain and
13 suffering, severe mental anguish and emotional and physical distress and injury,
14 expenses, humiliation, anxiety, loss of earnings, past and future, and other employment
15 benefits and job opportunities in an amount to be determined at trial, all in excess of the
16 Court's jurisdiction.

17 40. In doing the acts alleged herein, Hilton acted willfully, intentionally,
18 maliciously and with oppression, and in conscious disregard of the rights and safety of
19 Plaintiff, thereby entitling Plaintiff to an award of exemplary and punitive damages in an
20 amount to be proven at trial.

21 41. Plaintiff has also incurred and continues to incur legal expenses and
22 attorneys' fees. Plaintiff is presently unaware of the precise amount of these expenses
23 and fees. Plaintiff requests attorneys' fees pursuant to the FEHA and ADA.

24 **FOURTH CAUSE OF ACTION**
25 **Wrongful Termination in Violation of Public Policy**

26 **Against all Defendants**

27 42. Plaintiff incorporates all of the foregoing paragraphs as though fully set
28 forth herein.

43. The FEHA and ADA prohibit disability discrimination and retaliation because an employee reports discrimination to the EEOC or DFEH. The CFRA and FMLA prohibit discrimination or retaliation for taking protected leaves of absence. All such provisions within the FEHA, ADA, FMLA and CFRA were substantial and fundamental public policies that existed during Plaintiff's employment at Hilton and when she was discharged by Hilton.

44. As alleged earlier, Hilton terminated Plaintiff's employment in July, 2011 because, on information and belief, she had a disability or was regarded as having a disability, she requested reasonable accommodations, she made complaints of disability discrimination and violation of her privacy rights, and she took protected leaves of absence. In terminating Plaintiff's employment for these reasons, Hilton violated fundamental public policies established in the FEHA, ADA, FMLA and CFRA.

45. As a direct and proximate result of Hilton's conduct, Plaintiff has suffered and will continue to suffer pain and suffering, severe mental anguish and emotional and physical distress and injury, expenses, humiliation, anxiety, loss of earnings, past and future, and other employment benefits and job opportunities in an amount to be determined at trial, all in excess of the Court's jurisdiction.

46. In doing the acts alleged herein, Hilton acted willfully, intentionally, maliciously and with oppression, and in conscious disregard of the rights and safety of Plaintiff, thereby entitling Plaintiff to an award of exemplary and punitive damages in an amount to be proven at trial.

FIFTH CAUSE OF ACTION

Violation of Statutory Privacy Rights Regarding Medical Information **(Civil Code § 56 et seq., Gov't Code 12940(e)-(f), and 42 U.S.C. § 12112(d))**

Against all Defendants

47. Plaintiff incorporates all of the foregoing paragraphs as though fully set forth herein.

48. The California Confidentiality of Medical Information Act, California Civil Code § 56 et seq., the FEHA, Government Code § 12940(e)-(f), and ADA, 42 U.S.C. §

1 12112(d), place obligations and restrictions on California employers with regard to
2 requests and inquiries for medical information from employees. For example, employers
3 are prohibited from using or disclosing medical information of employees without
4 obtaining signed authorization from the employee, making inquiries regarding the
5 existence, nature or severity of a medical condition or disability, and discriminating
6 against employees who refuse to provide authorization.

7 49. On information and belief, Hilton violated the California Confidentiality of
8 Medical Information Act, the FEHA and ADA by (1) failing to obtain signed
9 authorization from Plaintiff to obtain, use and disclose her private medical information,
10 (2) making inquiries to Plaintiff's physician without her knowledge or consent to learn
11 the existence, nature and severity of her medical condition or disability, (3) obtaining,
12 using and disclosing her private medical information, and (4) discriminating against
13 Plaintiff for refusing to provide authorization to obtain her private medical information.

14 50. As a direct and proximate result of Hilton's conduct, Plaintiff has suffered
15 and will continue to suffer pain and suffering, severe mental anguish and emotional and
16 physical distress and injury, expenses, humiliation, anxiety, loss of earnings, past and
17 future, and other employment benefits and job opportunities in an amount to be
18 determined at trial, all in excess of the Court's jurisdiction.

19 51. In doing the acts alleged herein, Hilton acted willfully, intentionally,
20 maliciously and with oppression, and in conscious disregard of the rights and safety of
21 Plaintiff, thereby entitling Plaintiff to an award of exemplary and punitive damages in an
22 amount to be proven at trial.

23 **SIXTH CAUSE OF ACTION**
24 **Violation of Constitutional and Common Law Privacy Rights**

25 **Against all Defendants**

26 52. Plaintiff incorporates all of the foregoing paragraphs as though fully set
27 forth herein.

28 53. Employees within Hilton's Human Resources Department and other

1 departments were employed by Hilton at all relevant times and acting within the course
2 and scope of their authority and with the permission and consent of Hilton.

3 54. Plaintiff had a reasonable expectation that her private medical information
4 would not be accessed or sought by Hilton and its employees without her knowledge and
5 consent.

6 55. On information and belief, Hilton's employees intentionally invaded and
7 intruded into Plaintiff's zone of privacy by seeking and obtaining from Plaintiff's
8 physician her private medical information in September and October, 2009, even though
9 Plaintiff refused to provide consent for Hilton to obtain this information in September,
10 2009. Among other laws, this unlawful conduct violated the rights afforded Plaintiff by
11 Article 1, Section 1 of the California Constitution and common law privacy rights.

12 56. The intrusion was highly offensive and objectionable to Plaintiff and to a
13 reasonable person of ordinary sensibilities in that it was the kind of information that was
14 intimate and private.

15 57. The intrusion was into a place or thing which was private and entitled to be
16 private in that it concerned Plaintiff's health, medical condition and disability. It was not
17 the kind of information that was required to be disclosed to an employer or an employer's
18 human resources department, as Plaintiff was not seeking protected leaves of absence for
19 the week in question.

20 58. As a proximate result of the above conduct, Plaintiff suffered humiliation,
21 embarrassment, hurt feelings, mental anguish, lost compensation and other damages, all
22 to her general damages in an amount according to proof.

23 59. By engaging in the invasion of privacy, Hilton is guilty of oppression,
24 fraud, or malice, in that they took the action with the intent to vex, injure, or annoy
25 Plaintiff and with a willful and conscious disregard of Plaintiff's rights. Plaintiff
26 therefore seeks an award of punitive damages.

SEVENTH CAUSE OF ACTION

Violation of Family and Medical Leave Act and California Family Rights Act
(29 U.S.C. § 2601 et seq. and Gov't Code § 12945.2 et seq.)

Against all Defendants

60. Plaintiff incorporates all of the foregoing paragraphs as though fully set forth herein.

61. At all times alleged herein, Hilton was covered by and required to comply with the Family and Medical Leave Act, 29 U.S.C. § 2601 et seq., and the California Family Rights Act, Government Code § 12945.2 et seq., and Plaintiff was eligible for leave and the other protections afforded by those statutes.

62. Plaintiff had a "serious health condition" as defined by the FMLA and CFRA, provided sufficient notice of her intent to take such leave, and was entitled to 12 workweeks of leave within a 12-month period to be adjusted on a pro rata basis if necessary and intermittent leave or reduced schedule leave.

63. Plaintiff is informed and believes that although she was eligible for protected leaves of absence under the FMLA and CFRA and complied with all requirements in the FMLA and CFRA, including providing medical certifications to Hilton, Hilton willfully denied and interfered with the FMLA and CFRA benefits to which she was entitled.

64. Under the FMLA and CFRA, Hilton was prohibited from retaliating or discriminating against Plaintiff for taking or requesting protected leaves of absence, or complaining about or opposing violations of the FMLA and CFRA. On information and belief, Hilton willfully engaged in prohibited retaliation and discrimination by taking away duties that Plaintiff was capable of performing, disciplining Plaintiff, reducing Plaintiff's compensation, and terminating Plaintiff's employment.

65. As a direct and proximate result of Hilton's conduct, Plaintiff has suffered and will continue to suffer pain and suffering, severe mental anguish and emotional and physical distress and injury, expenses, humiliation, anxiety, loss of earnings, past and

1 future, and other employment benefits and job opportunities in an amount to be
2 determined at trial, all in excess of the Court's jurisdiction.

3 66. In doing the acts alleged herein, Hilton acted willfully, intentionally,
4 maliciously, and with oppression and in conscious disregard of the rights and safety of
5 Plaintiff, thereby entitling Plaintiff to an award of exemplary and punitive damages in an
6 amount to be proven at trial.

7 **EIGHTH CAUSE OF ACTION**
8 **Intentional Infliction of Emotional Distress**

9 Against all Defendants

10 67. Plaintiff incorporates all of the foregoing paragraphs as though fully set
11 forth herein.

12 68. The conduct of Hilton as set forth above was so extreme and outrageous
13 that it exceeded the boundaries of a decent society and lies outside of the compensation
14 bargain. Said conduct was intended to cause severe emotional distress, or was done in
15 conscious disregard of the probability of causing severe emotional distress. Said conduct
16 is also in violation of public policy.

17 69. As a proximate result of the wrongful conduct of Hilton, Plaintiff has
18 suffered and continues to suffer severe and continuous humiliation, emotional distress,
19 and mental pain and anguish, all to her damage in an amount according to proof at the
20 time of trial.

21 70. In doing the acts herein alleged, Hilton acted with oppression, fraud,
22 malice, and in conscious disregard of the rights of Plaintiff, and Plaintiff is therefore
23 entitled to punitive damages according to proof at the time of trial.

24 **NINTH CAUSE OF ACTION**
25 **Negligence**

26 Against all Defendants

27 71. Plaintiff incorporates all of the foregoing paragraphs as though fully set
28 forth herein.

1 72. Hilton owed a duty of care to Plaintiff and knew, or reasonably should have
2 known, that the FEHA and ADA required them to reasonably accommodate Plaintiff's
3 disability.

4 73. At all relevant times, Hilton knew, or reasonably should have known, that
5 the conduct, acts, and failure to act of their managers, supervisors, and agents violated
6 Plaintiff's rights under the statutory and regulatory law of the State of California and
7 federal law concerning disabled employees, which laws constitute public policy of the
8 State of California. Said conduct exceeded the inherent risks of employment and was not
9 the sort of conduct normally expected to occur in the workplace.

10 74. At all relevant times, Hilton knew, or reasonably should have known, that
11 the incidents, conduct, acts and failures to act described above, would and did
12 proximately result in physical and serious emotional injury to Plaintiff, including but not
13 limited to loss of sleep, anxiety, tension, depression and humiliation.

14 75. As a proximate result of the wrongful conduct of Hilton, Plaintiff has
15 suffered and continues to sustain substantial losses in earnings and other employment
16 benefits in an amount according to proof at the time of trial.

17 76. As a proximate result of the wrongful conduct of Hilton, Plaintiff has
18 suffered humiliation, serious emotional distress, and mental pain and anguish, all to her
19 damage in an amount according to proof at the time of trial.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff prays for relief and judgment against Defendants,
22 jointly and severally, as follows, in amounts according to proof (where amounts are
23 sought):

- 24 A. Judgment in favor of Plaintiff and against Defendants;
25 B. General, special and compensatory damages;
26 C. Punitive damages;
27 D. Pre-judgment interest;

1 E. Attorney's fees under the Government Code § 12920 et seq.,
2 including Government Code § 12965, the Americans with Disabilities Act (42 U.S.C.
3 § 12101 et seq.), California Civil Code § 56 et seq., and the Family Medical Leave Act
4 (29 U.S.C. § 2601 et seq.) and other applicable provisions of law;

5 F. Reinstatement to her position;

6 G. Liquidated damages;

7 H. Costs of suit; and

8 I. Such other relief as required by law, which the Court deems just
9 and proper.

10 DATE: DECEMBER 19, 2011

WOODALL LAW OFFICES

11 BY: 

12
13 KEVIN F. WOODALL
14 ATTORNEYS FOR PLAINTIFF, GWENDOLYN
15 GAVIN
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CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Kevin F. Woodall (SBN 180650) Woodall Law Offices 580 California Street, 16th Floor San Francisco, CA 94104 TELEPHONE NO.: 415.413.4629 FAX NO.: 866.937.4109 ATTORNEY FOR (Name): Gwendolyn Gavin		FOR COURT USE ONLY <div style="font-size: 24pt; font-weight: bold; margin: 10px 0;">RECEIVED</div> <div style="font-size: 18pt; font-weight: bold; margin: 10px 0;">DEC 19 2011</div> CLERK OF THE SUPERIOR COURT SAN MATEO COUNTY	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Mateo STREET ADDRESS: 400 County Center MAILING ADDRESS: CITY AND ZIP CODE: Redwood City, CA 94063 BRANCH NAME: Southern Branch			
CASE NAME: Gwendolyn Gavin v. Hilton Worldwide, Inc. dba Doubletree San Fran.			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)		<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	
<input type="checkbox"/> Counter		<input type="checkbox"/> Joinder	
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)			
CASE NUMBER: CIV 510537		JUDGE: DEPT:	

(Items 1-6 below must be completed (see instructions on page 2).)

1. Check one box below for the case type that best describes this case:
- | | | |
|---|--|---|
| Auto Tort
<input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46)
Other P/PI/D/W/D (Personal Injury/Property Damage/Wrongful Death) Tort
<input type="checkbox"/> Asbestos (04)
<input type="checkbox"/> Product liability (24)
<input type="checkbox"/> Medical malpractice (45)
<input type="checkbox"/> Other P/PI/D/W/D (23)
Non-PI/PD/W/D (Other) Tort
<input type="checkbox"/> Business tort/unfair business practice (07)
<input type="checkbox"/> Civil rights (08)
<input type="checkbox"/> Defamation (13)
<input type="checkbox"/> Fraud (16)
<input type="checkbox"/> Intellectual property (19)
<input type="checkbox"/> Professional negligence (25)
<input type="checkbox"/> Other non-PI/PD/W/D tort (35)
Employment
<input checked="" type="checkbox"/> Wrongful termination (36)
<input type="checkbox"/> Other employment (15) | Contract
<input type="checkbox"/> Breach of contract/warranty (06)
<input type="checkbox"/> Rule 3.740 collections (09)
<input type="checkbox"/> Other collections (09)
<input type="checkbox"/> Insurance coverage (18)
<input type="checkbox"/> Other contract (37)
Real Property
<input type="checkbox"/> Eminent domain/inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26)
Unlawful Detainer
<input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38)
Judicial Review
<input type="checkbox"/> Asset forfeiture (05)
<input type="checkbox"/> Petition re: arbitration award (11)
<input type="checkbox"/> Writ of mandate (02)
<input type="checkbox"/> Other judicial review (39) | Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)
<input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Construction defect (10)
<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
Enforcement of Judgment
<input type="checkbox"/> Enforcement of judgment (20)
Miscellaneous Civil Complaint
<input type="checkbox"/> RICO (27)
<input type="checkbox"/> Other complaint (not specified above) (42)
Miscellaneous Civil Petition
<input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other petition (not specified above) (43) |
|---|--|---|
2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): 9 (disability discrimination, retaliation, wrongful termination, etc...)
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 12/19/2011

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

WOODALL LAW OFFICES

580 California Street, 16th Floor
San Francisco, California 94104

Main (415) 439-4803
Direct (415) 413-4629

Fax (866) 937-4109
kevin@kwoodalllaw.com

December 20, 2011

Jamerson C. Allen
Jackson Lewis LLP
199 Fremont Street, 10th Floor
San Francisco, CA 94105

Re: *Gwendolyn Gavin v. Hilton Worldwide, Inc. dba
DoubleTree San Francisco Airport by Hilton*

Dear Mr. Allen:

During our correspondence, you confirmed that you are authorized to receive service on behalf of Hilton Worldwide, Inc. Further, you asked me to send you a Notice and Acknowledgement of Receipt for your signature, along with the Complaint, Summons and other documents. Enclosed please find those documents. Please sign and return the Notice and Acknowledgement of Receipt to me.

If you have any questions, please do not hesitate to call me.

Very truly yours,



Kevin F. Woodall

EXHIBIT B

POS-015

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Kevin F. Woodall (SBN 180650) Woodall Law Offices 580 California Street, 16th Floor San Francisco, CA 94104 TELEPHONE NO.: 415.413.4629 FAX NO. (Optional): 866.937.4109 E-MAIL ADDRESS (Optional): kevin@kwoodalllaw.com ATTORNEY FOR (Name): Gwendolyn Gavin	FOR COURT USE ONLY CASE NUMBER: CIV 510537
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Mateo STREET ADDRESS: 400 County Center MAILING ADDRESS: CITY AND ZIP CODE: Redwood City, CA 94063 BRANCH NAME: Southern Branch	
PLAINTIFF/PETITIONER: Gwendolyn Gavin DEFENDANT/RESPONDENT: Hilton Worldwide, Inc. dba Doubletree San Francisco	
NOTICE AND ACKNOWLEDGMENT OF RECEIPT—CIVIL	

TO (insert name of party being served): Hilton Worldwide, Inc. dba Doubletree San Francisco Airport by Hilton

NOTICE

The summons and other documents identified below are being served pursuant to section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it within 20 days from the date of mailing shown below may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.

Date of mailing: 12/21/11

Kevin Woodall

(TYPE OR PRINT NAME)

(SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE)

ACKNOWLEDGMENT OF RECEIPT

This acknowledges receipt of (to be completed by sender before mailing):

- ☒ A copy of the summons and of the complaint.
- ☒ Other (specify):

Notice of Case Management Conference; Case Management Statement; ADR Information Sheet; and civil case cover sheet

(To be completed by recipient):

Date this form is signed: 12/30/2011

Jamerson C. Allen
Hilton Worldwide, Inc.

(TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY,
ON WHOSE BEHALF THIS FORM IS SIGNED)

(SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF
ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)



Representing Management Exclusively in Workplace Law and Related Litigation

Jackson Lewis LLP
199 Fremont Street
10th Floor
San Francisco, California 94105
Tel 415 394-9400
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www.jacksonlewis.com

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BIRMINGHAM, AL	INDIANAPOLIS, IN	NEW YORK, NY	RICHMOND, VA
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CHICAGO, IL	LAS VEGAS, NV	OMAHA, NE	SAN DIEGO, CA
CINCINNATI, OH	LONG ISLAND, NY	ORANGE COUNTY, CA	SAN FRANCISCO, CA
CLEVELAND, OH	LOS ANGELES, CA	ORLANDO, FL	SEATTLE, WA
DALLAS, TX	MEMPHIS, TN	PHILADELPHIA, PA	STAMFORD, CT
DENVER, CO	MIAMI, FL	PHOENIX, AZ	WASHINGTON, DC REGION
		PITTSBURGH, PA	WHITE PLAINS, NY

December 30, 2011

FIRST CLASS MAIL

Kevin Woodall
Woodall Law Offices
580 California Street, 16th Floor
San Francisco, California 94104

Re: Gwendolyn Gavin v. Hilton Worldwide, Inc. dba
Doubletree San Francisco Airport by Hilton
Case Number CIV 510537

Dear Mr. Woodall:

Attached, please find the original Acknowledgment of Receipt executed on behalf of Defendant Hilton Worldwide, Inc., in the above-referenced matter. Thank you.

Sincerely yours,

JACKSON LEWIS LLP

Cheryl Cleary
Acting Assistant to Jamerson C. Allen

Attachment

EXHIBIT C

1 Jamerson C. Allen (SBN 122745)
2 Cara Ching-Senaha (SBN 209467)
3 JACKSON LEWIS LLP
4 199 Fremont Street, 10th Floor
5 San Francisco, California 94105
6 Telephone: (415) 394-9400
7 Facsimile: (415) 394-9401
8 Email: allenj@jacksonlewis.com
9 Email: ching-senahac@jacksonlewis.com

10 Attorneys for Defendant
11 HILTON WORLDWIDE, INC. DBA
12 DOUBLETREE HOTEL - SAN FRANCISCO
13 AIRPORT

ENDORSED FILED
SAN MATEO COUNTY

JAN 17 2012

Clerk of the Superior Court
By G. Jackson
DEPUTY CLERK

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SAN MATEO

16 GWENDOLYN GAVIN, an individual,
17 Plaintiff,

18 v.

19 HILTON WORLDWIDE, INC. DBA
20 DOUBLETREE SAN FRANCISCO AIRPORT
21 BY HILTON, AND DOES 1 THROUGH 15,
22 INCLUSIVE,

23 Defendants.

Case No. CIV 510537

**DEFENDANT HILTON
WORLDWIDE, INC. DBA
DOUBLETREE HOTEL - SAN
FRANCISCO AIRPORT'S ANSWER
TO PLAINTIFF GWENDOLYN
GAVIN'S UNVERIFIED COMPLAINT**

Complaint Filed: 12/19/2011

Trial Date: None Set

BY FAX

GENERAL DENIAL

24 Pursuant to Code of Civil Procedure Section 431.30(d), Defendant HILTON
25 WORLDWIDE, INC. DBA DOUBLETREE HOTEL - SAN FRANCISCO AIRPORT
26 (erroneously sued as "HILTON WORLDWIDE, INC. DBA DOUBLETREE SAN FRANCISCO
27 AIRPORT BY HILTON") (hereinafter referred to as "Defendant") denies, generally and
28 specifically, each and every allegation contained in Plaintiff GWENDOLYN GAVIN's
unverified "COMPLAINT FOR: 1. DISABILITY DISCRIMINATION; 2. FAILURE TO
PREVENT DISCRIMINATION; 3. RETALIATION; 4. WRONGFUL TERMINATION; 5.
VIOLATION OF STATUTORY RIGHT TO PRIVACY; 6. VIOLATION OF
CONSTITUTIONAL AND COMMON LAW RIGHTS TO PRIVACY; 7. VIOLATION OF

1 FAMILY MEDICAL LEAVE ACT AND CALIFORNIA FAMILY RIGHTS ACT; 8.
2 INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS; 9. NEGLIGENCE,” filed
3 December 19, 2011 (hereinafter “Complaint”).

4 **AFFIRMATIVE DEFENSES**

5 Defendant also asserts the following affirmative defenses to Plaintiff’s Complaint:

6 **FIRST AFFIRMATIVE DEFENSE**

7 Plaintiff’s Complaint as a whole, and each purported cause of action therein, fails to state
8 facts sufficient to constitute a cause of action against Defendant for which relief may be granted.

9 **SECOND AFFIRMATIVE DEFENSE**

10 Plaintiff’s employment, at all times relevant to this action, was at-will and could be
11 terminated by either party for any reason and at any time, with or without notice.

12 **THIRD AFFIRMATIVE DEFENSE**

13 Plaintiff’s first, second, third, fourth, fifth, sixth and seventh causes of action are barred
14 in whole or in part by the Plaintiff’s failure to timely and/or meaningfully exhaust her
15 administrative remedies under the California Fair Employment and Housing Act and/or
16 California Family Rights Act. Cal. Govt. Code §§ 12960 and 12965.

17 **FOURTH AFFIRMATIVE DEFENSE**

18 Plaintiff’s Complaint as a whole, and each purported cause of action therein, are barred in
19 whole or in part because Defendant’s acts and omissions were taken for legitimate, non-
20 discriminatory and non-retaliatory business reasons.

21 **FIFTH AFFIRMATIVE DEFENSE**

22 Plaintiff’s Complaint as a whole, and each purported cause of action therein, is barred in
23 whole or in part because assuming *arguendo* that discriminatory and/or retaliatory reasons were
24 a factor in any employment decision involving Plaintiff, which Defendant denies, Defendant
25 would have made the same employment decisions with regard to Plaintiff in any case for
26 legitimate, non-discriminatory and non-retaliatory business reasons.

27 **SIXTH AFFIRMATIVE DEFENSE**

28 Plaintiff is barred in whole or in part from recovering any damages, or any recovery must

1 be reduced, because Defendant exercised reasonable care to prevent and correct discriminatory
2 and/or retaliatory behavior, and Plaintiff unreasonably failed to avail herself of the internal
3 preventive or corrective remedies provided by Defendant to prevent and to otherwise avoid such
4 harm.

5 **SEVENTH AFFIRMATIVE DEFENSE**

6 If Plaintiff sustained any loss, injury, damage or detriment as alleged in the Complaint,
7 such loss, injury, damage or detriment was caused and contributed to by the actions of Plaintiff
8 because Plaintiff did not exercise reasonable care, and Plaintiff's loss, injury, damage or
9 detriment, if any, should be reduced in proportion to the percentage of Plaintiff's own
10 comparative or contributory negligence.

11 **EIGHTH AFFIRMATIVE DEFENSE**

12 Plaintiff is barred in whole or in part from recovering any damages, or any recovery must
13 be reduced, by virtue of Plaintiff's failure to exercise reasonable diligence to mitigate her alleged
14 damages.

15 **NINTH AFFIRMATIVE DEFENSE**

16 Plaintiff's damages, if any, are to be reduced by all income received by Plaintiff after her
17 separation from employment by Defendant. Such income shall include all earned income, state
18 disability payments, social security payments, private disability insurance, Medi-Cal and
19 Medicare benefits, and any other monies paid to Plaintiff in compensation for services rendered
20 under any federal, state or local program or from any private insurance.

21 **TENTH AFFIRMATIVE DEFENSE**

22 Plaintiff's Complaint, and each purported cause of action alleged therein, is barred by
23 Labor Code Sections 2854 or 2856 in that Plaintiff failed to use ordinary care and diligence in
24 the performance of her duties and failed to comply substantially with the reasonable directions of
25 Defendant.

26 **ELEVENTH AFFIRMATIVE DEFENSE**

27 Plaintiff's prayer for punitive damages is barred by California Civil Code section
28 3295(c). Defendant acted in good faith at all times relevant herein. No acts attributed to

1 Defendant were taken with fraud, oppression or malice by an officer, director or managing agent
2 of Defendant.

3 **TWELFTH AFFIRMATIVE DEFENSE**

4 The Complaint as a whole, and each purported cause of action alleged therein, is barred
5 to the extent Plaintiff comes to this Court with unclean hands.

6 **THIRTEENTH AFFIRMATIVE DEFENSE**

7 The Complaint as a whole, and each purported cause of action alleged therein, is barred
8 to the extent Plaintiff is estopped by her own conduct to claim any right to damages or any relief
9 against Defendant.

10 **FOURTEENTH AFFIRMATIVE DEFENSE**

11 Plaintiff's Ninth Cause of Action for Negligence, Eighth Cause of Action for Intentional
12 Infliction of Emotional Distress, Fifth Cause of Action for Violation of Statutory Right to
13 Privacy and Sixth Cause of Action for Violation of Constitutional and Common Law Right to
14 Privacy and any other claims for alleged emotional distress, injury or damage are barred in that
15 the exclusive remedy for Plaintiff's alleged emotional distress and other injuries, if any, lies
16 under the California Workers' Compensation Act, California Labor Code §§ 3600 et seq.

17 **FIFTEENTH AFFIRMATIVE DEFENSE**

18 Plaintiff's claim of disability discrimination is barred because she cannot prove that, "but
19 for" her disability, her employment would not have been terminated.

20 **SIXTEENTH AFFIRMATIVE DEFENSE**

21 Plaintiff's Complaint as a whole, and each purported cause of action therein, is barred in
22 whole or part by the applicable statutes of limitation, including, but not limited to, the applicable
23 statute of limitations under the California Fair Employment and Housing Act ("FEHA") and
24 California Family Rights Act ("CFRA"), including without limitation California Government
25 Code §§ 12940 et seq., 12960(d) and 12965(b); the applicable statute of limitations period under
26 California Code of Civil Procedure §§ 335.1, 338(a) and 343; the applicable statute of limitations
27 period for claims brought under the California Confidentiality of Medical Information Act;
28

1 and under the Americans with Disabilities Act ("ADA"), including without limitation 29 C.F.R.
2 § 1640 et seq. and 42 U.S.C. 2000e, seq.; and the applicable statute of limitations for claims
3 brought under the Family Medical Leave Act ("FMLA").

4 **SEVENTEENTH AFFIRMATIVE DEFENSE**

5 Plaintiff's claims are barred, in whole or in part, by her execution of a valid arbitration
6 agreement and therefore the exclusive forum for resolution of which claims is before an
7 arbitrator, consistent with the requirement of the Federal Arbitration Act and the California
8 Arbitration Act.

9 **EIGHTEENTH AFFIRMATIVE DEFENSE**

10 Plaintiff's Second Cause of Action for Failure to Prevent Harassment is barred in that
11 application of Government Code Section 12940(k) is unconstitutional in that the requirement to
12 take "all reasonable steps" is impermissibly vague.

13 **WHEREFORE**, Defendant prays for judgment as follows:

- 14 1. That Plaintiff take nothing by her Complaint;
15 2. That the Complaint be dismissed in its entirety with prejudice;
16 3. That Plaintiff be denied each and every demand and prayer for relief
17 contained in the Complaint;
18 4. For costs of suit incurred herein, including reasonable attorneys' fees; and
19 5. For such other and further relief as the Court deems just and equitable.

20
21 Dated: January 17, 2012

22 JACKSON LEWIS LLP

23
24 By: 

25 Jamerson C. Allen
26 Cara Ching-Senaha
27 Attorneys for Defendant
28 HILTON WORLDWIDE, INC. DBA
DOUBLETREE HOTEL - SAN FRANCISCO
AIRPORT

PROOF OF SERVICE

I, Cheryl K. Baltru, declare that I am employed with the law firm of Jackson Lewis LLP, whose address is 199 Fremont Street, 10th Floor, San Francisco, California 94105; I am over the age of eighteen (18) years and am not a party to this action.

On January 17, 2012, I served the attached **DEFENDANT HILTON WORLDWIDE, INC. DBA DOUBLETREE HOTEL - SAN FRANCISCO AIRPORT'S ANSWER TO PLAINTIFF GWENDOLYN GAVIN'S UNVERIFIED COMPLAINT** in this action by placing a true and correct copy thereof, enclosed in a sealed envelope(s), addressed as follows:

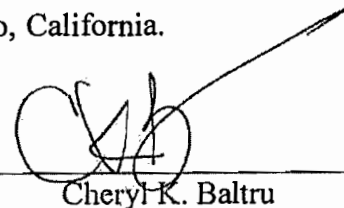
Kevin Woodall
WOODALL LAW OFFICES
580 California Street, 16th Floor
San Francisco, CA 94104
Main (415) 439-4803
Direct (415) 413-4629
Fax (866) 937-4109
kevin@kwoodalllaw.com

Attorneys for Plaintiff

- ☒ **BY MAIL:** United States Postal Service by placing sealed envelopes with the postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, in the United States mail at San Francisco, California. [() *Courtesy copy by fax.*]
- ☐ **BY HAND DELIVERY:** I caused such envelope(s) to be delivered by hand to the above address.
- ☐ **BY OVERNIGHT DELIVERY:** I caused such envelope(s) to be delivered to the above address within 24 hours by overnight delivery service.
- ☐ **BY FACSIMILE:** I caused such document to be transmitted by facsimile from our fax number (415) 394-9401 to the fax number indicated above (by written agreement, confirming letter dated and signed MM/DD/YY)
- ☐ **BY ELECTRONIC TRANSMISSION:** I caused such document(s) to be electronically transmitted to the above email address.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 17, 2012, at San Francisco, California.


Cheryl K. Baltru